

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

ELEANOR C. HUNTINGTON,

Appellant,

vs.

THE CITY OF NEVADA, et al.

Appellees.

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TRANSCRIPT OF RECORD.

Appeal from the Circuit Court of the United States
of the Ninth Judicial Circuit, in and for the
Northern District of California.

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*In the Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.*

IN EQUITY.

ELEANOR C. HUNTINGTON, a <i>Femme Sole</i>	} Complainant,
vs.	
THE CITY OF NEVADA, in the County of Nevada and State of Cali- fornia, and D. S. BAER, T. H. CARR, A. GAULT, J. F. HOOK, and J. C. RICH, Composing the Board of City Trustees of the said City of Nevada,	} Respondents.

Bill of Complaint.

To the Judges of the Circuit Court of the United States
in and for the Ninth Judicial Circuit, Northern Dis-
trict of California:

Eleanor C. Huntington, a femme sole, of the city, coun-
ty, and State of New York, and a citizen of the State of
New York, United States of America, brings this her bill
against the city of Nevada, of the county of Nevada,

State of California, United States of America, and a citizen of said State of California, United States of America, and D. S. Baker, of the city of Nevada, State of California, and a citizen of the State of California, United States of America; and T. H. Carr of the city of Nevada, State of California, and a citizen of the State of California, United States of America; and A. Gault of the city of Nevada, State of California, and a citizen of the State of California, United States of America; and J. F. Hook of the city of Nevada, State of California, and a citizen of the State of California, United States of America; and J. C. Rich of the city of Nevada, State of California, and a citizen of the State of California, United States of America.

And thereupon your oratrix complains and says:

That heretofore, to-wit, on the 12th day of March, 1878, an act was passed by the legislature of the State of California, entitled "An act to amend an act to incorporate the city of Nevada, and all acts supplemental thereto, and to repeal all acts in conflict herewith," approved March 12th, 1878, and that by virtue of the said act of the legislature of the State of California, approved March 12th, 1878, the people of the city of Nevada in the State of California became and were, and ever since have been, a municipal corporation under the name and style of the City of Nevada, and by that name may complain and defend in all courts and in all actions and proceedings, purchase, receive, and hold property and sell or otherwise dispose of the same for their common benefit, and that the said city of Nevada is still in existence under the

said corporate name and style mentioned and referred to in said act; and solely by virtue of the provisions of said act of March 12th, 1878, and not otherwise.

And your oratrix further shows that the respondents D. S. Baker, T. H. Carr, A. Gault, J. F. Hook, and J. C. Rich are now and have been for more than six months last past the members of the board of city trustees of said city of Nevada, and as such compose said board of city trustees and that they are the legislative body of said city of Nevada.

That your oratrix is now and has been for many years last past a taxpayer and the owner of property situate in said city of Nevada, and that said property has annually been placed upon the assessment-roll of said city of Nevada according to law, and that during all of said times she has annually and within the time prescribed by law paid to said city of Nevada and to the State of California all taxes which were levied or assessed against the said property of your oratrix situate in said city of Nevada aforesaid, and that she is still a taxpayer therein, and said property is now upon the assessment-roll of said city of Nevada, for the fiscal year 1895-96, and that she has paid all State, county, and municipal taxes thereon.

And your oratrix further alleges and shows that the people of the State of California in the year 1879 did in convention duly assembled adopt a new constitution to supersede the old constitution of the State of California, and that said new constitution of the State of California was thereafter ratified by the people of the State of California at an election held on the 7th day of May, 1879, and that said new constitution of the State of California

took effect on July 1st, 1879, for some purposes, and upon January 1st, 1880, for all purposes, and that ever since said last-named date the said new constitution of the State of California has formed and has been the only constitution for the government of the State of California and its legislative, executive, and judicial departments, and the people, citizens, and residents of the said State of California.

And your oratrix further shows that the said act of the legislature of the State of California so approved March 12th, 1878, as hereinabove shown, was passed and adopted and was the law for more than two years prior to the time the said new constitution of the State of California was adopted, ratified, or took effect, and that said act of March 12th, 1878, has never been altered, amended, or repealed either by the legislature of the State of California, or under or by virtue of any of the terms or provisions of the said new constitution of the State of California, and that said act of the legislature of the State of California, approved March 12th, 1878, incorporating said city of Nevada is now in full force and effect.

And your oratrix further shows that heretofore, to-wit, on the 18th day of July, 1895, the said board of trustees of said city of Nevada did pass an ordinance known as Ordinance No. 127, in the words and figures following, to-wit:

Ordinance No. 127.

An ordinance determining the necessity of the city of Nevada acquiring and owning waterworks and water, the cost of which will be in excess of its ordinary annual income.

The board of trustees of the city of Nevada do ordain as follows:

Section 1.

It is hereby determined that the public interest of Nevada City demands the acquisition and ownership by said city of waterworks, water, reservoirs and reservoir sites, pipes, aqueducts conduits, and all other appliances and things necessary or convenient for the storage of water by said city and the supplying of water to the residents thereof.

Section 2.

That the necessary cost thereof will be in excess of the ordinary annual income and revenue of said city.

Section 3.

This ordinance shall be published for three weeks in the Nevada City Daily 'Transcript,' and shall take effect on the 12th day of August, 1895.

Passed by the following vote:

Ayes: Baker, Carr, Hook, Gault, Rich.

Noes: ———.

Passed the 18th day of July, 1895.

D. S. BAKER,

President of the Board of City Trustees of Nevada City.

Attest: T. H. Carr, Clerk of the Board."

That said ordinance No. 127 has never been modified or rescinded, but is still in full force and effect.

That heretofore, to-wit, on the 17th day of September, 1895, the said board of trustees of the city of Nevada did pass an ordinance known as Ordinance Number 128, calling a special election, and submitting to the qualified voters of said city of Nevada at said election the proposition of incurring a municipal indebtedness to the aggregate sum of \$60,000.00 for the purpose of acquiring lands, water rights, rights of way, reservoirs, and other rights and things whatsoever necessary to construct and complete public waterworks for the said city, the cost of which would be too great to be paid out of the ordinary annual income and revenue of said city, and providing for the issuance of bonds of said city to said amount for said purpose, and prescribe the time and manner of holding such election and the voting for or against incurring the said indebtedness, and otherwise regulating said election and that the said Ordinance Number 128 was and is in the words and figures following, to-wit:

Ordinance No. 128.

An ordinance calling for a special election in the city of Nevada submitting to the qualified voters of said city at said election the proposition of incurring a municipal indebtedness to the aggregate amount of \$60,000.00 for the purpose of acquiring lands, water rights, rights of way, reservoirs, and other rights and things whatsoever necessary to construct and complete public waterworks for the said city, the cost of which will be too great to be paid out of the ordinary annual income and revenue of said city; providing for the issuance of bonds of said city

to said amount for said purpose; prescribing the time and manner of holding such election, and the voting for or against incurring such indebtedness, and otherwise regulating such election.

The board of trustees of the city of Nevada do ordain as follows:

Section 1.

Whereas, the board of trustees of the city of Nevada by ordinance heretofore duly passed by a vote of more than two-thirds of its members, i. e., by a unanimous vote, approved and published as required by law, has determined that the public interest and necessity demand, and whereas, the public interest and necessity do demand the acquisition of lands, water rights, rights of way, reservoirs, and the construction and completion of a system of waterworks that will furnish for the present and future an ample supply of pure, wholesome water to protect the health, comfort, safety, and best interest of the inhabitants of said city, and that the cost thereof is too great to be paid out of the ordinary annual income and revenue of said city; and

Whereas, said board of trustees has determined and does hereby determine that the assessed value of all property, both real and personal, in said city for taxable purposes is the sum of \$855,299.00, and that the annual income and revenues of said city do not amount to more than the sum of \$8,000.00; and

Whereas, by resolution, said board did duly appoint and authorize F. M. Miller, Geo. L. Nusbaumer, and W. F. Boardman, as civil engineers to make surveys, plans

and estimates of said contemplated waterworks on behalf of and in the interest of said city of Nevada, and

Whereas, said board of trustees has heretofore caused to be made by F. M. Miller, Geo. F. Nusbaumer, and W. F. Boardman, plans and estimates of the cost of said contemplated public improvements, which said plans and estimates were duly submitted to said board, and by them heretofore duly accepted and approved after careful examination and consideration by said board; and

Whereas, said Geo. L. Nusbaumer and W. F. Boardman are each and all competent civil engineers, who before doing said work have had successful experience in such work as the aforesaid contemplated public improvements, which facts said board of trustees has determined and does now unanimously adjudge and determine hereby; and

Whereas, it appears by said plans and estimates that the cost of such contemplated public improvements will amount to \$60,000.00 in the aggregate, which amount is largely in excess of the ordinary annual income and revenue of said city;

Now, therefore, in consideration of the premises, and in pursuance of the acts, ordinances, and proceedings aforesaid, and of the statutes in such cases made and provided, a special election is hereby called and ordered to be held and conducted in and for the city of Nevada, State of California, at the time and in the manner hereinafter fixed and prescribed, at which special election there shall be submitted to the qualified voters of said city of Nevada, to be voted upon at said special election as hereinafter provided, the proposition of incur-

ring an indebtedness by said city of Nevada amounting in the aggregate to the sum of \$60,000.00 for the purpose of acquiring lands, water rights, rights of way, reservoirs, and all other rights and things whatever necessary for the construction and completion of public waterworks for the said city of Nevada and constructing and completing said waterworks.

Section 2.

The objects and purposes for which the said indebtedness is proposed to be incurred are as follows: The acquisition by the said city of Nevada of reservoirs, rights of way, lands, and all other rights and things whatsoever, necessary for constructing and completing public waterworks for said city and its inhabitants, and to establish, complete, and thoroughly equip a system of public works therein with reservoirs, pipes, mains, laterals, and whatsoever things shall be necessary therefor to supply said city and its inhabitants with an adequate supply of wholesome water.

Section 3.

The estimated cost of the acquisition and construction of said reservoirs, lands, rights of way, water rights, and other rights and things whatsoever necessary therefor, and of the whole of said public improvements is as follows, to-wit, the sum of \$60,000.

Section 4.

The acquisition of said lands, reservoirs, rights of way,

water rights, and all other rights and things whatsoever required for constructing and completing said public waterworks, and the said construction and completion of said waterworks as aforesaid are necessary to the city of Nevada and its inhabitants for the following reasons, to-wit:

First.—Because it now is, and for many years last past has been, utterly impossible to obtain an adequate supply of pure, wholesome water for the use of said city and its inhabitants for any fair or reasonable sum of money, the price charged therefor being exorbitant.

Second.—Because the present system of waterworks owned by Mrs. E. C. Huntington, and the only source of supply now and for many years last past supplying said city and its inhabitants thereof with water, is imperfect, the pipes, mains, and laterals are corroded and clogged with rust, and do not extend to all parts of the city, or supply all the inhabitants thereof with water.

Third.—Because in case of emergency, fire, etc., there is a wholly adequate supply and insufficiency of pressure of water for the needs and requirements of said city, and that by no means other than the acquisition of the aforesaid property, rights, and things, and the construction and completion of said public waterworks as hereinbefore set forth, can said city and its inhabitants be properly supplied. That the public interest and necessities of the city of Nevada and its inhabitants demand the acquisition, construction, and completion of such public waterworks.

Section 5.

That the cost of the acquisition of said property, rights, and things and of the construction and completion of said reservoirs is and will be too great to be paid out of the ordinary annual income and revenue of said city of Nevada, and that it is necessary to incur an indebtedness in the aggregate sum of \$60,000.00, and to issue bonds of the said city to that amount to pay the cost thereof.

Section 6.

That bonds of the city of Nevada of the character known as 'serials,' to the aggregate amount of \$60,000.00, will be issued for the cost of said public improvements above in this ordinance set forth if the proposition to incur said indebtedness be accepted by two-thirds of all the qualified voters voting at said election, and said bonds will be issued and made payable so that one-fortieth part of the whole amount shall be paid each and every year on a day and at a place to be fixed by said board of trustees, together with interest on all sums unpaid at such date at the rate of six per cent per annum, until the entire debt shall be paid.

Section 7.

The special election hereby called as aforesaid shall be held on Monday, the 28th day of October, 1895, and shall be held and conducted, the votes thereat received and canvassed, returns thereof made, and the result thereof

ascertained and determined as herein provided, and according to the law governing elections in said city of Nevada, and the polls of such election shall be and remain open from sunrise of the 28th day of October, 1895, to the hour of five o'clock in the afternoon of said day, when the polls shall be closed.

Section 8.

Notice of the said special election shall be published for not less than two weeks prior to said day of election, and after the final publication of this ordinance as hereinafter provided in at least one of the newspapers published in said city of Nevada, in accordance with the terms of the statute in such cases made and provided.

Section 9.

The ballots which shall be used at the said special election shall be of the same character and form as those ballots used at other municipal elections in the said city of Nevada, except as otherwise provided herein. Each of said ballots shall have printed thereon the following heading, to-wit, 'Municipal Ticket,' underneath which shall be printed the number of the precinct in which such ballot is to be voted, underneath which shall be printed the following words, to-wit, 'proposition for incurring an indebtedness by the city of Nevada to the aggregate amount of \$60,000 for the acquisition of reservoirs, lands, rights of way, water rights, and all other things and rights whatsoever necessary for constructing and com-

pleting said waterworks, and constructing and completing the same as set forth in Ordinance No. 128.' Underneath this shall be printed the following: 'To vote for or against incurring said indebtedness stamp a cross (X) to the right of and against the answer which you desire to give.' Underneath which shall be printed in one line the following: 'For incurring the indebtedness,' to the right of which shall be printed in one square the word 'Yes,' with a blank square to the right thereof, and immediately below the same, in one line the following: 'For incurring the indebtedness,' to the right of which shall be printed in one square the word 'No,' with a blank square to the right thereof. Every voter desiring to vote in favor of the proposition of incurring the said indebtedness shall, in voting, stamp a cross (X) in the blank square to the right of the word 'Yes' printed upon his ballot as aforesaid; and every voter desiring to vote against said proposition shall, in voting, stamp a cross (X) in the blank square to the right of the word 'No' printed upon his ballot as aforesaid.

Section 10.

The election precincts and the numbers and boundaries thereof shall be the same as those heretofore established, creating, and designated by the board of trustees of the said city of Nevada, and now existing therein. The places of election, and the officers who shall conduct said special election in each of the several precincts of said city of Nevada, shall be and they are hereby designated and appointed as follows, to-wit:

The places of election shall be:

For Precinct One: 'Cutter's Carriageshop,' on Boulder Street;

For Precinct Two: 'City Hall,' on Broad Street.

For Precinct Three: 'Transcript Building,' on Commercial Street.

The officers who shall conduct said special election shall be:

For Precinct One:

Inspectors.—Richard Tremain and John Brodie.

Judges.—J. D. Fleming and Samuel Curtis.

Clerks.—H. C. Weisenburger and J. J. Jackson.

Ballot Clerks.—George B. Johnson and John Rafter.

For Precinct Two:

Inspectors.—A. D. Allen and C. J. Brand.

Judges.—John Swart and E. Booth.

Clerks.—I. J. Rolfe and E. J. Rector.

Ballot Clerks.—Max Isoard and John Webber.

For Precinct Three:

Inspectors.—Geo. M. Hughes and John Dunningcliff.

Judges.—B. N. Shoecraft and Henry Lane.

Clerks.—J. E. Carr and J. E. Isaac.

Ballot Clerks.—Felix Gillett and A. Hartung.

Section 11.

As soon as the polls are closed in each of said precincts the judges of election shall canvass the votes cast in their respective precincts for and against incurring the indebtedness aforesaid, as nearly as practicable, in the manner provided by law for canvassing votes for municipal offi-

cers elected at elections held in the city of Nevada. The returns for the said precincts shall be made out and signed in the usual form by the officers of election for said precincts respectively, and shall be forthwith deposited with the clerk of the board of trustees of said city of Nevada, together with the ballots cast at said special election in said precincts respectively. The board of trustees of said city shall as soon as the said returns and ballots from all of said precincts have been deposited with said clerk canvass the said returns in the manner provided by law for canvassing returns of election of municipal officers of said city. If, upon the canvass of said returns, it shall be ascertained and determined that at least two-thirds of all the *votes* voting at said special election have voted in favor of the aforesaid proposition for incurring the said indebtedness of \$60,000.00, then the bonds of said city of Nevada hereinbefore mentioned shall be issued by the board of trustees as herein by law provided, and as hereafter prescribed by said board.

Section 12.

Immediately upon the passage of this ordinance and its approval by the president of the board of trustees aforesaid, the said ordinance is hereby ordered and directed to be and shall be published in the 'Daily Transcript,' a daily newspaper published in said city of Nevada for the period of two weeks, and shall be published in each issue of said paper as often as the same is published during said period, and the last publication thereof shall not be less than fifteen days prior to the day of the special election hereby called.

In the board of trustees of the city of Nevada, September 18th, 1895.

Passed by the following vote:

Ayes: Baker, Carr, Gault, Hook, Rich.

Noes:

D. D. BAKER,

President of the Board of City Trustees of the City of Nevada.

Attest: T. H. Carr. Clerk of the Board.

Approved September 18th, 1895.

D. S. BAKER,

President of the Board of Trustees of the City of Nevada and the Executive of said City."

That said Ordinance Number 128 has never been modified or rescinded, but is still in full force and effect.

And your oratrix further alleges and shows that thereafter and on the 10th day of October, 1895, the said board of trustees of the city of Nevada did give and cause to be given notice of such special election so thereafter to be held on said 28th day of October, 1895, touching the matters just hereinabove referred to with reference to the incurring of said indebtedness and the proposed issue of said bonds, and that on said 28th day of October, 1895, said special election was in fact held, and that more than two-thirds of all the voters voting at such special election authorized the issuance of the said bonds aggregating sixty thousand dollars as aforesaid.

And your oratrix further shows that since said special election so held on said 28th day of October, 1895, said board of trustees of said city of Nevada have caused to

be issued, printed, published, and circulated, a notice entitled "Notice to Bond Buyers," which said notice is in the words and figures following, to-wit:

"Notice to Bond Buyers.

Sealed bids will be received by the clerk of the board of city trustees for the purchase of \$60,000, six per cent annual interest water bonds of the city of Nevada, California, up to 8 o'clock, P. M., of the 12th day of December, 1895. The bonds are all of the denomination of \$500. Three of said bonds, together with the interest due on all the bonds, will be payable at the office of the treasurer of said city on the first Monday in December, 1896; and a like number with all interest due will be payable each year thereafter on the same date for 40 years.

The law requires the bonds to be sold for gold coin. The bonds are payable in gold coin or lawful money of the U. S. Bids for the whole or any specified number of said bonds will be considered. The bonds cannot be sold for less than their par value. Money for the bonds must be paid within twenty days after sale. No bids will be considered unless accompanied by a certified check for at least 5 per cent of the amount bid.

T. H. CARR,
Clerk of the Board, Nevada City, Cal."

That said last named notice to bond buyers has never been rescinded or altered, but still remains in full force and effect.

And your oratrix further alleges and shows that in passing said ordinances Numbers 127 and 128, respect-

ively, and in calling said special election hereinabove referred to, and in causing said notice to bond buyers to be so printed, published, advertised, and circulated the said city of Nevada and said board of city trustees of said city of Nevada did assume to act under and by virtue of the act of the legislature of the State of California, entitled "An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever, and to repeal the act approved March 9, 1885, entitled an act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks; also to repeal an act approved March 15, 1887, entitled an act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State." Approved March 19, 1889.

And also under and by virtue of an act supplemental to said act approved March 19, 1889, and entitled "An act to amend section five of an act approved March 19, 1889, entitled "An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever, and to repeal the act approved March 9, 1885, entitled 'An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks'; also, to repeal

an act approved March 15, 1887, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State, March 19, 1889.' " Approved March 11, 1891.

And also under and by virtue of the provisions of an act supplemental to said two last-named acts, and entitled "an act to amend section two of an act approved March 19, 1889, entitled "An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever, and to repeal the act approved March 9, 1885, entitled 'An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks'; also, to repeal the act approved March 9, 1885, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State.' " Approved March 11, 1891.

And also under and by virtue of an act supplemental to said three last-named acts, and entitled "An act to amend sections nine and ten of an act entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever; and to repeal the act approved March 9, 1885, entitled 'An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain

waterworks'; also, to repeal an act approved March 15, 1887, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State.' Approved March 19, 1889. Approved March 19, 1891.

And also under and by virtue of an act supplemental to said four last-named acts, and entitled "An act to amend section six and section eight of an act approved March 19, 1895, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever.' And to repeal the act approved March 9, 1885, entitled 'An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks'; also to repeal an act approved March 15, 1887, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State.'" Approved March 1, 1893.

And in that behalf your oratrix further avers and shows that said five acts of the said legislature of the State of California, so approved respectively March 19th, 1889, March 11th, 1891, March 11th, 1891, March 19th, 1891, and March 1st, 1893, did not nor did or could any or either of them increase or diminish, enlarge, or in anywise affect the powers or authority of the said board of city trustees of said city of Nevada, which were fixed in and by said act of the legislature of the State of California incorporating said city of Nevada, and that since said

last-named act took effect it has constituted and been a special charter to the said people of the city of Nevada as hereinabove shown.

That as your oratrix is informed and believes said act of the legislature of the State of California, so approved March 12th, 1878, was a special law, and that the same was not repealed by the adoption of the said new constitution of the State of California hereinabove referred to.

And your oratrix further shows that the said city of Nevada has never been disincorporated, nor has it elected or chosen to reincorporate under the said new constitution of the State of California or to avail itself of any legislation adopted since said new constitution took effect.

And in that behalf your oratrix further avers and shows that, among other things, it was provided in said charter of said city of Nevada under and by virtue of the provisions of said act of the legislature of the State of California, approved March 12th, 1878, as aforesaid, in subdivision 18 of section 8 of said act as follows, that is to say:

“Said board of trustees shall not contract any liabilities, either by borrowing money, loaning the credit of the city, or contracting debts which, singly or in the aggregate, shall exceed the sum of two thousand dollars.”

And your oratrix having shown that notwithstanding the fact that the said city of Nevada and said board of directors of said city are prohibited from contracting any liabilities, either by borrowing money, loaning the credit of the city, contracting debts which, singly or in the ag-

gregate, shall exceed the sum of two thousand dollars, as provided in said charter of said city of Nevada, yet the said board of city trustees have taken each and all the said proceedings hereinabove referred to and have advertised and given public notice, as hereinabove shown, that a municipal indebtedness in the sum of sixty thousand dollars is about to be incurred on behalf of said city of Nevada, and that water bonds of said city of Nevada will immediately be issued in the form and upon the terms and conditions specified in said Ordinances numbered 127 and 128, respectively, and as set out in said notice to bond buyers, a copy of which is hereinabove set forth, and said board of said trustees has given out its intention to annually levy a tax upon all the assessable property situate within the corporate limits of the said city of Nevada for the next coming forty years to provide for the payment of the interest and the ultimate redemption of the principal of said bonds, aggregating said sum of sixty thousand dollars, and that under said five acts just hereinabove referred to it will be and become the duty of said board of city trustees to annually levy and cause the same to be collected.

And your oratrix further shows in that behalf that the property of your oratrix will annually be taxed for said forty years to come, together with other property situate in said city of Nevada equally liable for said tax for the purposes aforesaid, which, as your oratrix is informed and believes, and therefore alleges, will be illegal and contrary to law and to the irreparable injury and damage of your oratrix.

And your oratrix further shows that after said taxes

have been so levied and assessed against her said property for the purpose hereinabove set forth that the same will be subjected to sale, and, unless paid, will be sold, to her irreparable damage and loss.

And your oratrix further shows that unless restrained and enjoined by this Honorable Court that said city of Nevada and said board of trustees of said city will incur said indebtedness aggregating said sum of sixty thousand dollars, and will issue and sell said water bonds to the amount aforesaid as set out in said notice to bond buyers hereinabove set forth in full, and that said proposed and threatened action of said city of Nevada and said board of trustees is in excess of the powers of said city of Nevada and said board of trustees, and will greatly affect the market value of the property of your oratrix and the property of all other persons owning property in said city of Nevada similarly situated as the property of your oratrix and subject to said special tax, and that she will thereby be irreparably damaged.

And your oratrix further avers and shows, on her information and belief, that said city of Nevada and its inhabitants are already furnished and supplied with pure, fresh water for domestic and all other necessary purposes, and that said supply of said water is abundant in every respect and for all the wants and necessities of the said city of Nevada and its inhabitants, except in a few remote districts, and that the same is sufficient for all purposes of every kind, domestic, irrigating, extinguishment of fires, and other purposes, and that therefore the interests and demands of said city of Nevada and its in-

habitants do not require the incurring of said indebtedness, nor the issuing nor sale of said bonds aggregating said sum of sixty thousand dollars or any part or portion thereof.

And your oratrix further shows that the rates of the sale and disposition of said water are annually fixed by the said board of city trustees of said city of Nevada, and being the five individual respondents hereinabove named, and that said rates are fair and reasonable, and not oppressive or unjust or discriminating.

And your oratrix further shows that she is the owner of the present system of waterworks at said city of Nevada, and that if said indebtedness be incurred and said bonds be issued and sold as hereinabove set forth, that the same will injure your oratrix and her said property, and that the same will be wholly lost to her, and that the same will greatly affect and impair the value of her said property, to her great loss and damage unless the said city of Nevada and said board of trustees of said city of Nevada be enjoined and restrained by this Honorable Court from further proceeding in said matter.

Wherefore, and because of the matters and things aforesaid, your oratrix respectfully prays this Honorable Court that upon the hearing of this cause an injunction be issued out of and from and under the seal of this Honorable Court enjoining and restraining said city of Nevada and said board of trustees of said city of Nevada, and their and each of their officers, agents, employees, and attorneys from further proceeding in said matter, or from receiving or accepting any bids for the purchase of said

bonds or any part thereof, or from selling, issuing or delivering said bonds or any part thereof, or from levying or collecting said special tax or any part thereof, and that upon such hearing such injunction be made perpetual, and also for her costs and disbursements in this behalf incurred, and for such other and further relief as may be conformable to equity and good conscience.

FRANK T. NILON,
WILSON & WILSON,
Solicitors for Complainant.

RUSSELL J. WILSON,
Of Counsel.

State of California,)
City and County of San Francisco, } ss.

Eleanor C. Huntington, being duly sworn, deposes and says that she is the complainant in the above-entitled action; that she has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief, and as to those matters that she believes it to be true.

ELEANOR C. HUNTINGTON.

Subscribed and sworn to before me, this 6th day of December, A. D. 1895.

[Seal]

JAMES MASON,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed December 10, 1895. W. J. Costigan,
Clerk. By W. B. Beazley, Deputy Clerk.

UNITED STATES OF AMERICA.

*In the Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.*

IN EQUITY.

Subpœna ad Respondendum.

The President of the United States of America, Greeting,
to the City of Nevada, in the County of Nevada, and
State of California, D. S. Baker, T. H. Carr, A. Gault,
J. F. Hook, and J. C. Rich, composing the board of
city trustees of the said city of Nevada.

You are hereby commanded that you be and appear in
said Circuit Court of the United States aforesaid, at the
courtroom in San Francisco, on the third day of Feb-
ruary, A. D. 1896, to answer a bill of complaint exhibited
against you in said Court by Eleanor C. Huntington, a
femme sole, who is a citizen of the State of New York,
and to do and receive what the said Court shall have con-
sidered in that behalf. And this you are not to omit, un-
der the penalty of five thousand dollars: •

Witness, the Honorable MELVILLE W. FULLER,
Chief Justice of the United States, this 10th day of De-
cember in the year of our Lord one thousand eight hun-
dred and ninety-five, and of our Independence the 120th.

[Seal]

W. J. COSTIGAN, Clerk.

By W. B. Beazley, Deputy Clerk.

Memorandum Pursuant to Rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to enter your appearance in the above suit, on or before the first Monday of February next, at the clerks office of said Court, pursuant to said bill; otherwise the said bill will be taken pro confesso.

[Seal]

W. J. COSTIGAN, Clerk.

By W. B. Beazley, Deputy Clerk.

United States Marshal's Office, }
Northern District of California. }

I hereby certify that I received the within writ on the 11th day of December, 1895, and personally served the same on the 11th day of December, 1895, on T. H. Carr, A. Gault, J. F. Hook, and J. C. Rich, composing the board of city trustees of the city of Nevada, by delivering to and leaving with T. H. Garr, A. Gault, J. F. Hook, and J. C. Rich, composing the board of city trustees of the said city of Nevada, said defendants named therein, at the county of Nevada, in said district, an attested copy thereof.

San Francisco, December 14th, 1895.

BARRY BALDWIN,

U. S. Marshal.

By S. P. Monckton, Deputy.

United States Marshal's Office, }
Northern District of California. }

I hereby certify that I received the within writ on the

11th day of December, 1895, and personally served the same on the 12th day of December, 1895, on D. S. Baker, one of the board composing the board of city trustees of the city of Nevada, by delivering to and leaving with D. S. Baker, one of the board composing the board of city trustees of the city of Nevada, said defendant named therein, personally, at the county of Nevada in said District, a certified copy thereof.

San Francisco, December 14th, 1895.

BARRY BALDWIN,

U. S. Marshal.

By S. P. Monckton, Deputy.

United States Marshal's Office, }
Northern District of California. }

I hereby certify that I received the within writ on the 11th day of December, 1895, and personally served the same on the 12th day of December, 1895, on the city of Nevada in the county of Nevada and State of California, by delivering to and leaving with D. S. Baker, chairman of the board of city trustees of the said city of Nevada, said defendant named therein, personally, at the county of Nevada, in said District, a certified copy thereof, together with a copy of the bill in equity.

BARRY BALDWIN,

U. S. Marshal.

By S. P. Monckton, Deputy.

San Francisco, December 14th, 1895.

[Endorsed]: Filed Dec. 16, 1895. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, in and for the
Ninth Judicial District, Northern District of California.*

IN EQUITY.

ELEANOR C. HUNTINGTON, a Femme
Sole,

Complainant,

vs.

THE CITY OF NEVADA, in the Coun-
ty of Nevada, and State of California,
and D. S. BAKER, T. H. CARR, A.
GAULT, J. F. HOOK, and J. C. RICH
Composing the Board of City Trustees
of the said City of Nevada,

Respondents.

Demurrer.

To the Judges of the Circuit Court of the United States in
and for the Ninth Judicial District, Northern Dis-
trict of California:

Now, by attorneys, come the above-named respondents,
and demur to complainant's bill herein, on the following
grounds, to-wit:

1.

That the bill of complaint herein does not state facts

sufficient to constitute a cause of action against respondents, or either of them.

Wherefore, respondents ask to be hence dismissed with their costs.

ALFRED D. MASON,
City Attorney.

J. M. WALLING,
Attorney for Respondents.

State of California, }
County of Nevada, } ss.

I, J. M. Walling, attorney and counselor at law, hereby certify that in my opinion the foregoing demurrer is well founded in point of law, and that the same is interposed in good faith, and not for the purpose of delay.

Witness my hand this 4th day of January, A. D. 1896.

J. M. WALLING,
Attorney and Counselor at Law and Attorney for Respondents.

State of California, }
County of Nevada, } ss.

T. H. Carr, being first duly sworn, according to law, deposes and says: I am a citizen of the United States over the age of 21 years, and am one of the respondents named in the above-entitled action. Affiant further says that I have read the foregoing demurrer on behalf of respondents, and that the same is interposed in good faith and not for the purposes of delay.

T. H. CARR.

Subscribed and sworn to before me this 4th day of January, A. D. 1896.

[Seal]

JOHN CALDWELL,
Superior Judge, Nevada Co., Cal.

[Endorsed]: Service of the within by copy admitted this 14th day of January, A. D. 1896. Frank T. Nilon, Wilson & Wilson, Attorneys for Complainant. Filed Jany. 16th, 1896. W. J. Costigan, Clerk.

At a special session of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Wednesday, the 17th day of June, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable JOSEPH McKENNA, Circuit Judge.

ELEANOR C. HUNTINGTON, }

vs. }

CITY OF NEVADA, et al. }

No. 12,146.

Order Sustaining Demurrer.

The demurrer of the respondents to the bill of complaint herein having been heretofore submitted to the

court for consideration and decision, and the same having been fully considered, and the oral opinion of the court having been delivered, it is ordered that said demurrer be, and the same is hereby, sustained with leave to the complainant to amend her bill of complaint within ten days if she shall be so advised.

At a stated term, to-wit, the July term, A. D. 1896, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Friday, the 24th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable JOSEPH McKENNA, Circuit Judge.

ELEANOR C. HUNTINGTON,	}	No. 12,146.
vs.		
THE CITY OF NEVADA, et al		

Order Dismissing Bill of Complaint.

It appearing to the satisfaction of the Court that the time within which complainant was allowed to file an amended bill herein expired upon the 18th instant, and that no amended bill has been filed, and the time for filing the same not having been extended,

Now, upon motion of J. M. Walling, Esq., counsel for

respondents, it is ordered that the default of said complainant be and hereby is entered, and it is further ordered that a decree be filed and entered herein dismissing complainant's bill of complaint, and that respondents have judgment for their costs.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

ELEANOR C. HUNTINGTON, a Femme

Sole,

Complainant,

vs.

THE CITY OF NEVADA, et al.,

Respondents.

No. 12,146.

Enrollment.

The complainant filed her bill of complaint herein on the 10th day of December, 1895, which is hereto annexed.

A subpoena to appear and answer in said cause was thereupon issued, returnable on the 3rd day of February, A. D. 1896, which is hereto annexed.

The respondents appeared herein on the 6th day of January, 1896, by Alfred D. Mason and J. M. Walling, Esqs., their solicitors.

On the 16th day of January, 1896, a demurrer was filed herein, which is hereto annexed.

On the 17th day of June, 1896, an order sustaining said demurrer, with leave to complainant to amend her bill within ten days, was made and entered herein, a copy of which order is hereto annexed.

On the 24th day of July, 1896, the default of complainant was by order of Court duly entered herein, a copy of which order is hereto annexed.

Thereafter, a final decree was signed, filed, and entered herein, in the words and figures following, to-wit:

At a stated term, to-wit, the July term, A. D. 1896, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Friday, the 24th day of July, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable JOSEPH McKENNA, Circuit Judge.

ELEANOR C. HUNTINGTON, a Femme Sole, Complainant, vs. THE CITY OF NEVADA, et al., Respondents.	} } }	No. 12,146.
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Final Decree.

In this cause the demurrer of respondents to the bill of

complaint of complainant having, on the 17th day of June, 1896, been sustained, with leave to complainant to amend her bill within ten days, and said time, with the extensions thereof, having expired, and no amendment to said bill, or amended bill having been filed, and the default of said complainant having been this day entered, and the Court having, upon motion of J. M. Walling, Esq., counsel for respondents, ordered that complainant's bill be dismissed, and that respondents have judgment for their costs:

Whereupon, upon consideration, thereof, it is ordered, adjudged, and decreed, that the complainant's bill of complaint herein be and the same hereby is dismissed, and that respondents recover from complainant their costs herein expended, taxed at \$17.00.

JOSEPH McKENNA,
Circuit Judge.

Filed and entered July 24th, 1896. W. J. Costigan,
Clerk.

Certificate to Enrollment.

Whereupon, said pleadings, subpoena, copies of orders, final decree are hereto annexed, said final decree being duly signed, filed, and enrolled, pursuant to the practice of said Circuit Court.

Attest, etc.

[Seal]

W. J. COSTIGAN, Clerk.

[Endorsed]: Enrolled papers. Filed July 24th, 1896.
W. J. Costigan, Clerk.

Hon. JOSEPH McKENNA, Judge.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

ELEANOR C. HUNTINGTON,	}	No. 12,146.
Complainant,		
vs.		
CITY OF NEVADA, et al.,		
Respondents.		

Opinion.

Wednesday, June 17, 1896.

Decision of the Court upon demurrer to bill of complaint: Demurrer sustained.

Appearances: Messrs. F. T. Nilon and Wilson & Wilson, for the Complainant;

Messrs. Alfred D. Mason and J. M. Walling, for the Respondents.

The Court (Orally).—This is a suit to restrain the issuance of bonds under an ordinance of the city of Nevada, which is claimed to be illegal.

The ordinance was passed to provide for the erection and maintenance of waterworks, the ordinary expenditures of the city authorized by its charter not being sufficient for that purpose.

The city of Nevada was incorporated prior to the adoption of the new constitution, so-called. The ordinance complained of was passed under an act of the legislature

of this State, with reference to which the following language is contained in the bill:

“And your oratrix further alleges and shows that in passing said Ordinances Numbers 127 and 128, respectively, and in calling such special election hereinbefore referred to, and in causing said notice to bond buyers to be so printed, published, advertised, and circulated, the said city of Nevada and said board of city trustees of said city of Nevada did assume to act under and by virtue of the act of the legislature of the State of California, entitled ‘An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State; for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever, and to repeal the act approved March 9, 1885, entitled “An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks”’; also to repeal an act approved March 15, 1887, entitled ‘An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State,’ approved March 19, 1889; and also under and by virtue of an act supplemental to said act approved March 19, 1889, and entitled ‘An act to amend section five of an act approved March 19, 1889, entitled “An Act authorizing the incurring of indebtedness by cities, towns, ”’ etc.

It is urged by complainant that these acts are not applicable to cities or towns incorporated before the adoption of the new constitution. The provision of the con-

stitution relied on is section 6 of article XI, which is as follows:

“Corporations for municipal purposes shall not be created by special laws; but the legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which clause may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities and towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this constitution, shall be subject to and controlled by general laws.”

Desmond v. Dunn, 55 Cal. 245, is cited to sustain the complainant's contention, and the case appears to justify this. But almost immediately the Court began to modify that case. This appears in *Barton v. Kallock et al.*, 56 Cal. 104, and more distinctly in *Wood v. Election Commission*, 58 Cal. 569.

After a preliminary explanation, which may be omitted, the Court said: “Yet the city and county of San Francisco remains a subdivision of the State, and is not entirely free from legislative control. For, in the same section of the constitution in which the then existing city and town organizations are recognized and the continuance of their existing charters permitted, it is declared that ‘cities and towns heretofore . . . organized . . . shall be subject to and controlled by general laws.’”

A case preceding that is the case of *Earl v. Board of*

Supervisors, 55 Cal. 489. The case of *Desmond v. Dunn* was not passed on there; the case turns on the effect of special laws.

In *Donahue v. Graham*, 61 Cal. 276, Mr. Justice McKinstry, in a dissenting opinion, held that *Desmond v. Dunn* decided that the consolidation act was continued in existence as an entirety. The majority of the Court, however, did not pass on *Desmond v. Dunn*. It held certain provisions of the constitution to be self-operative, and as the street law of San Francisco was inconsistent with it, it was held to be repealed, following *McDonald v. Patterson*, 54 Cal. 245.

The case of *Staude v. Election Commission*, 61 Cal. 320, explains *Desmond v. Dunn*, and interprets the constitution to mean that it is only in the "incorporation, organization, and classification of cities and towns incorporated prior to the new constitution, which are preserved"—that in all else cities and towns are subject to the control of the legislature by general laws.

The case of *In re Carillo*, 66 Cal. 5, is to the same effect as the case of *Staude v. Election Commission*.

In re Guerrero, 69 Cal. 89, is not in conflict with *In re Carillo* or *Staude v. Election Commission*, but confirms them. The question in the case was the power of the city of Los Angeles to license certain employments. It was held doubtful under the charter, but confirmed by the new constitution. The Court said, at page 92, that the legislature has no power, after the adoption of the new constitution, by special legislation, but intimates that it has by general laws.

I wish to say in passing that I am only making a run-

ning comment on the decisions, and not attempting a complete review of them—only instancing their point.

In *Thomson v. Ashworth*, 73 Cal. 73, there is a clear interpretation of the constitution. It is there interpreted to mean that the limitation on the power of the legislature over corporations (except as to organization, etc., which may be beyond control) formed prior to it (the constitution) is only by special laws. It cannot be done under special laws, but must be done under general laws. In other words, the legislature may exercise (except as above stated) control by general laws. The Court in that case said:

“It is argued that, according to the views herein expressed, a city may have its charter totally changed without its consent. This is a proper deduction from the ruling herein, but this cannot be done by a special or local law, applicable alone to a particular charter. The result can only be reached by a general law affecting all municipal corporations, or may be all of a class. . . .”

In *City of Stockton v. Insurance Commissioners*, 73 Cal. 624, there seems to be a modification, also, of *Desmond v. Dunn*, in part. The Court in that case say:

“We do not mean to imply that the legislature, even by a general law, can substitute an entirely new charter for an old one, without the consent of the people of the locality. To that extent we understand the decision in *Desmond v. Dunn*, *supra*, to be the law.

In passing, this may be said to be an inconsistency, because, if a charter can be amended by general laws, what is the limit of change? We are not now concerned with this apparent or real inconsistency.

The case of *People v. Henshaw*, 76 Cal. 437, affirms the power over corporations formed prior to the constitution by the legislature by general laws.

There are some other objections to the legality of the ordinances and the issue of the bonds, which I think are not well taken. Upon these views, it follows that the demurrer must be sustained. As I have said, this is a somewhat crude review of the cases, because I have not had the time to put it in proper shape, but the essence of the cases has been properly given.

Mr. Wilson.—It is doubtful, if your Honor please, whether the bill can be amended, but with your Honor's permission, I will take ten days to consider the question.

The Court.—Very well. Let an order be entered granting the complainant ten days in which to amend.

[Endorsed]: Filed June 17th, 1896. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, for the Northern
District of California, Ninth Circuit.*

SUIT IN EQUITY.

ELEANOR C. HUNTINGTON, a

Femme Sole,

Complainant,

vs.

THE CITY OF NEVADA, in the Coun-

ty of Nevada, and State of California,

and D. S. BAKER, T. H. CARR, A.

GAULT, J. F. HOOK, and J. C. RICH,

Composing the Board of City Trus-

tees of the said City of Nevada,

Respondents.

No. 12146.

Petition for Appeal.

To the Judges of the Circuit Court of the United States
for the Northern District of California:

Eleanor C. Huntington, feeling aggrieved by the decision and decree of the said Circuit Court in sustaining the demurrer to and in dismissing her bill in the above-entitled action, by the undersigned, her solicitors herein, respectfully prays and makes application for, and gives notice of, an appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit, from the decree of

said Circuit Court given and rendered in the above-entitled action on the 24th day of July, A. D. 1896, in favor of the above named respondents and against the above-named complainant dismissing her bill. The complainant files herewith her assignment of errors to said decision and decree, showing wherein said decision and decree are erroneous and wherein the complainant has been aggrieved by said decision and decree, and prays that an appeal from said decree may be allowed.

January 22d, 1897.

RUSSELL J. WILSON,
MOUNTFORD S. WILSON,
Solicitors for Complainant.

[Endorsed]: Petition for Appeal. Filed January 22d, 1897. W. J. Costigan, Clerk.

*In the Circuit Court of the United States for the Northern
District of California, Ninth Circuit.*

SUIT IN EQUITY.

ELEANOR C. HUNTINGTON, a
Femme Sole,
Complainant,
vs.

THE CITY OF NEVADA, in the Coun-
ty of Nevada, and State of California,
and D. S. BAKER, T. H. CARR, A.
GAULT, J. F. HOOK and J. C.
RICH, Composing the Board of City
Trustees of the said City of Nevada,
Respondents.

No. 12146.

Assignment of Errors.

In accordance with Rule Eleven of the United States Circuit Court of Appeals in and for the Ninth Circuit, the complainant files with her petition for an appeal from the decree of the Circuit Court in and for the Northern District of California dismissing her bill an assignment of errors setting out separately and particularly each error asserted and intended to be urged in support of her appeal:

I.

The Court erred in sustaining the demurrer of the respondents to the bill filed against them by the complainant in the above-entitled suit in equity.

II.

The Court erred in sustaining the demurrer upon the ground that complainant has no cause of action upon the facts set forth and alleged in the bill against the respondents.

III.

The Court erred in sustaining the demurrer upon the ground that the legislature of California is not restrained by section six of article XI of the constitution of California adopted in 1879 from exercising control, by general laws, over municipal corporations created prior to its adoption, but only from passing special laws affecting such corporations.

IV.

The Court erred in holding that the case of *Desmond v. Dunn*, reported in 55 Cal. 245, does not sustain the contention of complainant that the city of Nevada is not subject to the control of the legislature, by general laws, and that the said case has been so modified by subsequent decisions as to nullify its force and effect, so far as bearing upon the case at bar.

V.

The Court erred in holding that the acts of the legislature of California set forth in this specification of error are applicable to cities and towns incorporated before the adoption of the "new constitution," so-called, the said acts being described and entitled as follows:

1. "An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever, and to repeal the act approved March 9, 1885, entitled 'An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks'; also to repeal an Act approved March 15, 1887, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State,' " approved March 19, 1889.

2. "An act to amend section five of an act approved March 19, 1889, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever, and to repeal the act approved March 9, 1885, entitled 'An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten

thousand inhabitants, to obtain waterworks'; also, to repeal an act approved March 15, 1887, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State,' March 19, 1889," approved March 11, 1891.

3. "An act to amend section two of an act approved March 19, 1889, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever'; and to repeal the act approved March 9, 1885, entitled 'An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks'; also to repeal an act approved March 15, 1887, entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State,' " approved March 11, 1891.

4. "An act to amend sections nine and ten of an act entitled 'An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever'; and to repeal the act approved March 9, 1885, entitled 'An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks'; also, to repeal an act approved March 15, 1887, entitled 'An act authorizing the

incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State, approved March 19, 1889.’” Approved March 19, 1891.

5. “An act to amend section six and section eight of an act approved March 19, 1889, entitled ‘An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations, incorporated under the laws of this State, for the construction of waterworks, sewers, and all necessary public improvements, or for any purpose whatever; and to repeal the act approved March 9, 1885, entitled ‘An act to authorize municipal corporations of the fifth class, containing more than three thousand and less than ten thousand inhabitants, to obtain waterworks’; also to repeal an act approved March 15, 1887, entitled ‘An act authorizing the incurring of indebtedness by cities, towns, and municipal corporations incorporated under the laws of this State.’”

VI.

The Court erred in holding that the said Ordinances Numbers 127 and 128, adopted by the board of trustees of the city of Nevada, and herein complained of, were legally adopted, said ordinances having been passed under the acts of the legislature last above described in the fifth assignment of error herein.

VII.

The Court erred in holding that the said Ordinance

Number 127 so passed by the board of trustees of said city of Nevada, was legally adopted, contrary to the objection of the complainant; that the same was not approved by the executive officer of the municipality, as required by law. The said Ordinance Number 127 in full being as follows:

“Ordinance No. 127.

An ordinance determining the necessity of the city of Nevada acquiring and owning waterworks and water, the cost of which will be in excess of its ordinary annual income.

The Board of Trustees of the city of Nevada do ordain as follows:

Section 1.

It is hereby determined that the public interest of Nevada City demands the acquisition and ownership by said city of waterworks, water, reservoirs and reservoir sites, pipes, aqueducts, conduits, and all other appliances and things necessary or convenient for the storage of water by said city and the supplying of water to the residents thereof.

Section 2.

That the necessary cost thereof will be in excess of the ordinary annual income and revenue of said city.

Section 3.

This ordinance shall be published for three weeks in

the Nevada City 'Daily Transcript,' and shall take effect on the 12th day of August, 1895.

Passed by the following vote:

Ayes: Baker, Carr, Hook, Gault, Rich.

Noes:

Passed the 18th day of July, 1895.

D. S. BAKER,

President of the Board of City Trustees of Nevada City.

Attest: T. H. Carr, Clerk of the Board."

VIII.

The Court erred in not holding that the proceedings leading up to the issue of bonds were illegal.

IX.

The Court erred in holding that the various acts of the legislature set forth in the bill and also in the fifth assignment of error, approved respectively on March 19, 1889, March 11, 1891, March 11, 1891, March 19, 1891, and March 1st, 1893, affect the powers of the board of trustees of said city of Nevada, contrary to the act of the legislature, approved March 12, 1878, incorporating said city of Nevada.

X.

The Court erred in not holding that said city of Nevada had no right or authority to contract any liability, either

by borrowing money, loaning the credit of the city, or contracting debts which, singly or in the aggregate, should exceed the sum of two thousand dollars, as limited and prescribed in its charter under the act of the legislature of the State of California, approved March 12th, 1878.

XI.

The Court erred in not holding that all the acts and proceedings of the said board of trustees in passing said ordinances leading up to the issue of said bonds and the borrowing of the sums contemplated, were illegal and void ab initio.

XII.

The Court erred in rendering its decree dismissing the bill.

XIII.

The Court erred in not rendering its decision in favor of the complainant in said action and granting the relief prayed for in the bill of complaint therein.

XIV.

For the manifest errors appearing in the decision and in the decree dismissing the bill complainant prays that the decision and decree be reversed.

January 22d, 1887.

RUSSELL J. WILSON,
MOUNTFORD S. WILSON,
Solicitors for Complainant.

[Endorsed]: Assignment of Errors. Filed January 22d, 1897. W. J. Costigan, Clk.

At a stated term, to-wit, the November term, A. D. 1896, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Friday, the 22d day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

Present: The Honorable JOSEPH McKENNA, Circuit Judge.

IN EQUITY.

ELEANOR C. HUNTINGTON, a
Femme Sole,
Complainant,
vs.

THE CITY OF NEVADA, in the County of Nevada, and State of California, and D. S. BAKER, T. H. CARR, A GAULT, J. F. HOOK and J. C. RICH, Composing the Board of City Trustees of the said City of Nevada.
Respondents.

No. 12146.

Order Allowing Appeal.

Upon motion of Russell J. Wilson, Esq., one of the

members of the law firm of Wilson & Wilson, and one of the Solicitors for complainant, and upon the presentation and filing of a petition for an order allowing an appeal, and an assignment of errors—

It is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the final decree heretofore on the 24th day of July, A. D. 1896, filed and entered herein be, and the same is hereby, allowed, and that a certified transcript of the pleadings, exhibits, record, and all proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that a bond on appeal in the sum of five hundred (\$500) dollars be approved and filed.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

ELEANOR C. HUNTINGTON,
Complainant and Plaintiff,
vs.

THE CITY OF NEVADA, et al.,
Respondents and Defendants.

} No. 12146

Bond on Appeal.

Know All Men by These Presents, that we Eleanor C.

Huntington, as principal, and Charles G. Lathrop and Charles H. Lovell, as sureties, are held and firmly bound unto the said defendants and respondents, in the full and just sum of five hundred (\$500.00) dollars, to be paid to the said defendants and respondents, their attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-second day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas, lately at a session of the Circuit Court of the United States, for the Northern District of California, in a suit depending in said Court, between the said complainant and the said respondents a decision and decree was rendered against the said complainant, and the said complainant, having obtained from said Court an order allowing an appeal, to reverse the said decision and decree made and entered, in the aforesaid Court, and a citation directed to the said respondents and defendants is about to be issued citing and admonishing them to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California, on the nineteenth day of February next—

Now, the condition of the above obligation is such, that if the said complainant and appellant shall prosecute her said appeal according to law and to effect, and shall answer all damages and costs that shall be awarded against them, if she fail to make said plea good, then the

above obligation to be void; else to remain in full force and virtue.

CHAS. G. LATHROP. [Seal]

CHAS. H. LOVELL. [Seal]

ELEANOR C. HUNTINGTON. [Seal]

By RUSSELL J. WILSON, and
MOUNTFORD S. WILSON,
Her Solicitors.

United States of America, }
Northern District of California, } ss.
City and County of San Francisco. }

Charles G. Lathrop and Charles H. Lovell, being duly sworn, each for himself, deposes and says that he is a householder in said district, and is worth the sum of five hundred (\$500.00) dollars, exclusive of property exempt from execution, and over and above all debts and liabilities.

CHAS. G. LATHROP.
CHARLES H. LOVELL.

Subscribed and sworn to before me, this 22nd day of January, A. D. 1897.

[Seal] JAMES MASON,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Bond on Appeal. Form of bond and sufficiency of securities approved. JOSEPH McKENNA, Judge. Filed January 22, 1897. W. J. Costigan, Clerk.

In the Circuit Court of the United States, of the Ninth Judicial Circuit, Northern District of California.

ELEANOR C. HUNTINGTON,

Complainant,

vs.

THE CITY OF NEVADA, et al.,

Respondents.

No. 12146.

Certificate to Transcript.

I, W. J. Costigan, Clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing pages, numbered from 1 to 54 inclusive, to be a full, true, and correct copy of the record and proceedings in the above-entitled cause, and that the same together constitute the transcript of the record herein, upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$31.60, and that said amount was paid by appellant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Circuit Court this 9th day of February, A. D. 1897.

[Seal]

W. J. COSTIGAN,

Clerk United States Circuit Court, Northern District of California.

Citation.

UNITED STATES OF AMERICA, ss.

The President of the United States, to the City of Nevada, in the County of Nevada, and State of California, and D. S. Baker, T. H. Carr, A. Gault, J. F. Hook, and J. C. Rich, composing the board of city trustees of the said city of Nevada, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, on the 19th day of February next, pursuant to an order allowing an appeal entered in the clerk's office of the Circuit Court of the United States, Ninth Circuit, Northern District of California, in a certain action numbered 12146, wherein Eleanor C. Huntington, a femme sole, is complainant and appellant, and you are respondents and appellees, to show cause, if any there be, why the decree rendered against the said complainant and appellant as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable JOSEPH McKENNA, Judge of the United States Circuit Court, Ninth Circuit, Northern District of California, this 22nd day of January, A. D. 1897.

JOSEPH McKENNA,
U. S. Circuit Judge.

Service of within citation and receipt of a copy thereof is hereby admitted this first day of Feb. 1897.

J. M. WALLING and
A. D. MASON.

Attorneys for Defendants and Respondents.

[Endorsed]: Citation. Filed Feby. 9th, 1897. W. J. Costigan, Clerk.

[Endorsed]: No. 356. In the United States Circuit Court of Appeals for the Ninth Circuit. Eleanor C. Huntington, Appellant, v. The City of Nevada, et al., Appellees. Transcript of Record. Appeal from the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California.

Filed February 18th, 1897.

F. D. MONCKTON,
Clerk.